

SEP 26 2005

F-103

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A Limited Liability Company

Fax Transmission | September 26, 2005

TO:

Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450	FROM: Charles Vorndran  OUR REF: 60200.0022US11  TELEPHONE: 404-954-5061
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Total pages, including cover letter: 56PTO FAX NUMBER 1-571-273-8300

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Title of Document Transmitted: Information From Related LitigationApplicant: A. Bart FlickSerial No.: 09/613,961Filed: July 11, 2000Group Art Unit: 3761Our Ref. No. 60200.0022US11

Confirmation No. \_\_\_\_\_

Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725. Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers, if appropriate.

By: Charles VorndranName: Charles VorndranReg. No.: 45.315

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Charles Vorndran

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\* U.S. patent (recycle): pages 18/56 - 56/56. chau

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S/N 09/613,961

PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	A. Bart Flick	Examiner:	LEWIS, Kim
Serial No.:	09/613,961	Group Art Unit:	3761
Filed:	July 11, 2000	Docket No.:	60200.0022US11
Title:	Multilayer Laminate Wound Dressing		

CERTIFICATE UNDER 37 CFR 1.6(d):

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on September 26, 2005.

By: 

Name: Charles Vorndran Reg. No. 45,315

Information From Related Litigation

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

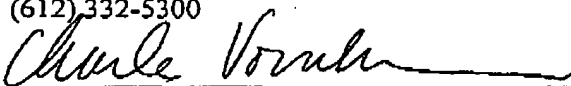
Pursuant to MPEP § 2001.06(c), Applicant hereby brings to the attention of the U.S. Patent and Trademark Office notice of civil litigation concerning the above-referenced application. A copy of the complaint and exhibits is attached. The complaint having docket number 3:05cv1855 was filed on or about September 13, 2005.

Applicant respectfully requests that this paper be considered and made of record. Applicant believes no fee is due with this paper; however, the Commissioner is authorized to charge any requisite fee to Deposit Account No. 13-2725.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

Date: 09/26/2005

  
Charles Vorndran  
Reg. No. 45,315**23552**

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HOURIGAN, KLUGER & QUINN  
A PROFESSIONAL CORPORATION

BY: ARTHUR L. PICCONE, ESQUIRE  
JENNIFER L. ROGERS, ESQUIRE

ATTORNEY FOR PLAINTIFF

IDENTIFICATION NO. 018707 (ALP) 78772 (JLR)

LAW OFFICES  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO.:

NOBLE FIBER TECHNOLOGIES, LLC,  
a Pennsylvania limited liability corporation,

Plaintiff,

v.

ARGENTUM MEDICAL, LLC, a  
Delaware limited liability corporation,

Defendant.

COMPLAINT

Plaintiff, Noble Fiber Technologies, LLC, ("Noble") by and through its undersigned attorneys, for its Complaint for injunctive relief, general damages, special damages, and punitive damages and declaratory relief against Defendant, Argentum Medical, LLC ("Argentum") states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Noble is a Pennsylvania limited liability corporation with its principal place of business in Clarks Summit, Pennsylvania. Noble markets and distributes worldwide a silver fiber which is incorporated into fabrics for, inter alia, medical uses.

2. Argentum is a Delaware limited liability corporation with its principal place of business in Willowbrook, Illinois. Argentum is a competitor of Noble in the wound care market and also sells products worldwide incorporating silver fiber, directly to customers through a completely interactive web site, [www.silverlon.com](http://www.silverlon.com), and to medical professionals through a national network of dealers who sell Argentum products in every state, including Pennsylvania.

3. Argentum represents that Argentum is the exclusive licensee of U.S. Patent No. 6,861,570 (the "'570 Patent") and claims in U.S. Patent Application 09/631,961 (the '961 Application). As the exclusive licensee, Argentum would hold all rights to the '570 Patent and the '961 Application. (A copy of the '570 Patent and the allowed claims of the '961 Application are attached.)

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1331 and 1338(a) and (b) for federal questions relating to patents and unfair competition, and §1332 as a civil action

between citizens of different states where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

5. The Court has jurisdiction to hear a justiciable controversy pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201 et seq.

6. The Court has personal jurisdiction over Argentum pursuant to 42 Pa. Cons. Stat. Ann. §5322(b) and venue is proper in this judicial district because plaintiff resides here; the injury to Noble from Argentum's conduct has occurred, and will occur here; and Argentum has purposefully directed its activities toward Noble and Pennsylvania.

#### NATURE OF THE COMPLAINT

7. In this action, Noble seeks the Court's declaratory judgment that: (a) Noble and its products do not infringe any claims of the '570 Patent or the '961 Application; and (b) the claims of the '570 Patent and '961 Application are invalid. Noble also seeks equitable and legal relief from Argentum's violation of Section 43 of the Lanham Act, 15 U.S.C. §1125, and Common Law Commercial Disparagement under Pennsylvania law.

**GENERAL ALLEGATIONS**

8. Argentum has engaged in a systematic effort to falsely promulgate misleading descriptions of fact and misleading representations of fact in its commercial promotion, and to misrepresent the characteristics and qualities of Noble's goods, services and commercial activities.

9. Argentum on April 8, 2005 sent Noble a letter in which it accused Noble, its manufacturer, or its distributors of infringing the '570 patent by making, using, selling, offering to sell or import certain of Noble's products.

10. On May 11, 2005, Argentum again wrote to Noble a virtually identical letter in which it accused Noble, its manufacturer or distributor of infringing allegedly allowed claims of the '961 Application, in the same manner.

11. Noble has responded to these charges with a denial of any infringement and a request for an explanation from Argentum of its infringement claims.

12. Argentum has refused to explain its infringement charges.

13. Argentum has advised Noble customers and distributors falsely and misrepresented that Noble's products infringe patents and applications whose rights are held by Argentum. In these contacts, Argentum misrepresented the nature, characteristics and qualities of Noble's goods.

14. Julius Zorn, Inc. ("Juzo") operating under the brand Juzo manufactures and sells therapeutic compression support stocking, gloves and the like. Juzo's products include stocking that use silver fiber fabrics developed by Noble.

15. Argentum has accused Juzo of infringing Argentum's patent and patent application by use of the Noble silver fiber technology.

16. Argentum has further misrepresented to Juzo that Noble knows its silver fiber technology infringes Argentum's patent and patent application but that Noble has failed to tell Juzo.

17. Another example of Argentum's false and misleading statements regarding Noble and its products have been directed to J & D Wilkie, Ltd., which utilizes Noble's silver fiber technology in some of its textile products. Argentum falsely states to J & D Wilkie, Ltd. that "Argentum Medical is the IP owner of conductive silver nylon applied to mammalian tissue for analgesia, anti-inflammation, and tissue regeneration. Noble Fiber will be infringing on Argentum's IP if they promote or sell a silver fiber for physiological condition."

18. Noble reasonably believes that unless Argentum is prevented by injunction from further disseminating false and misleading representations and mis-descriptions of fact, Noble's damage is and will be irreparably harmed.

19. The correspondence from and conduct of Argentum have created a reasonable apprehension on Noble's part that it and/or its manufacturer, distributors and customers are faced with an infringement suit if they continue to use products which Argentum allege are covered by the claims of the '570 patent and the '961 Application. Argentum's actions have actually hindered and prevented Noble's ability to sell its products.

20. As a result, a justiciable controversy exists between Argentum and Noble as to the non-infringement and invalidity of the '570 Patent and the '961 Application.

**COUNT I**

**DECLARATORY RELIEF –  
NONINFRINGEMENT – '570 PATENT**

21. Noble hereby incorporates and realleges Paragraphs 1 through 20 above as though fully set forth herein.

22. None of the claims of the '570 Patent are infringed, either literally or under the doctrine of equivalents, by Noble's products because, without limitation, products embodying such claims are not made, used, offered for sale, or sold by Noble.

23. Noble is entitled to a declaratory judgment of this Court that the claims of the '570 Patent are not infringed by Noble, its products, or the use thereof.

**COUNT II**

**DECLARATORY RELIEF –  
NONINFRINGEMENT – '961 APPLICATION**

24. Noble hereby incorporates and realleges Paragraphs 1 through 20 above as though fully set forth herein.

25. None of the claims of the '961 Application are not infringed, either literally or under the doctrine of equivalents, by Noble's products because, without limitation, products embodying such claims are not made, used, offered for sale, or sold by Noble.

682611.1



26. None of the claims of the '961 Application can be legally infringed because the claims are not legally enforceable. These claims, even if allowed are still pending, and a patent claim is not enforceable and cannot be infringed until the patent issues.

27. Noble is entitled to a declaratory judgment of this Court that the claims of the '961 Application are not infringed by Noble, its products, or the use thereof.

### COUNT III

#### **DECLARATORY RELIEF - INVALIDITY - '570 PATENT**

28. Noble hereby incorporates and realleges Paragraphs 1 through 20 above as though fully set forth herein.

29. The '570 Patent is invalid for failure to comply with the patent laws of the United States, including but not limited to, 35 U.S.C. §§102, 103, 112, 251 and 252.

30. Noble is entitled to a declaratory judgment of this Court that the claims of the '570 Patent are invalid.

### COUNT IV

#### **DECLARATORY RELIEF - INVALIDITY AND UNENFORCEABILITY - '961 APPLICATION**

31. Noble hereby incorporates and realleges Paragraphs 1 through 20 above as though fully set forth herein.

32. The '961 Application is invalid for failure to comply with the patent laws of the United States, including but not limited to, 35 U.S.C. §§102, 103, 112, 251 and 252, and 37 C.F.R. §1.56.

33. The '961 Application is unenforceable because a patent application does not provide a right to exclude and cannot be enforced until the corresponding patent issues.

34. Noble is entitled to a declaratory judgment of this Court that the claims of the '961 Application are invalid and/or unenforceable.

#### COUNT V

##### VIOLATION OF SECTION 43 OF THE LANHAM ACT 15 U.S.C. §1125

35. Noble incorporates and realleges paragraphs 1 – 34 as though fully set forth herein.

36. Argentum's statements to customers and distributors and to Noble that Noble's products infringe a patent and patent application are false and misleading descriptions of fact and representations of fact used in commercial promotion, which misrepresent the nature, characteristics and qualities of Noble's goods in violation of 15 U.S.C. §1125(a)(1)(B).

37. Noble is harmed by Argentum's false claims on infringement.

#### COUNT VI

##### COMMON LAW COMMERCIAL DISPARAGEMENT

38. Noble incorporates and realleges paragraphs 1 – 34 as though fully set forth herein.

39. Argentum's statements to customers and distributors and to Noble that Noble's products infringe the '570 Patent and the '961 Application are untrue and incorrect.

40. Argentum has no privilege to make these statements.

41. Noble has suffered a direct pecuniary loss as a result of the disparagement.

**PRAYER FOR RELIEF**

**FOR COUNTS I-IV:**

Noble requests this honorable Court to enter judgment in its favor:

- a. Declaring that the '570 Patent and each of its claims are not infringed by Noble, Noble's products, or the use thereof;
- b. Declaring that the '961 Application and its claims are not infringed by Noble, Noble's products, or the use thereof;
- c. Declaring that the '570 Patent and each of its claims are invalid;
- d. Declaring that the '961 Application and its claims are invalid and/or unenforceable;
- e. Awarding Noble its costs and reasonable attorneys' fees incurred in connection with this action, including without limitation, pursuant to 35 U.S.C. §285; and
- f. Granting Noble such other and further relief as this Court may deem just and proper.

**FOR COUNT V:**

Noble requests this honorable Court to enter judgment:

- a. Permanently enjoining Argentum, any parent, subsidiaries, agents, attorneys, successors and assigns, and all persons acting on its behalf and control, from continuing to violate 15 U.S.C. §1125(a);
- b. Awarding Noble all profits of Argentum from sales resulting from violation of this Act, together with Noble's damages and the costs and expenses of this action, and that such award be increased by three times the amount found as actual damages as provided by 15 U.S.C. §1117, together with prejudgment interest; and
- c. Finding the case exceptional and award reasonable attorneys' fees to Noble.

**FOR COUNT VI:**

Noble requests this honorable Court to enter judgment:

- a. Awarding compensatory damages against Argentum for said conduct in breach of a confidential relationship, including attorneys' fees, costs and expenses, and prejudgment interest;
- b. Awarding punitive damages adequate to punish Argentum for its willful commercial disparagement and to deter such reprehensible commercial behavior.

Respectfully submitted,

**HOURIGAN, KLUGER & QUINN, P.C.**  
Arthur L. Piccone, Esquire  
Jennifer Rogers, Esquire  
600 Third Avenue  
Kingston, PA 18704

Jennifer L. Rogers /s

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04-13-05 13:10 FROM-SAUQUOIT IND. 5703480920 T-432

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SEP 26 2005

April 8, 2005

Mr Frank McNally  
President  
Sauquoit Industries  
300 Palm Street  
Scranton, PA 18505

*Via United Parcel Service*

RE: U.S. Patent No. 6,861,570 entitled "Multilayer Conductive Appliance Having Wound  
Healing And Analgesic Properties"  
Issued March 1, 2005

Dear Frank:

Argentum Medical is the exclusive licensee of the above-referenced patent and produces and sells  
conductive wound dressings, in particular silver-containing wound dressings under various FDA 510K's  
A copy of U.S. Patent No. 6,861,570 is enclosed for your review and consideration.

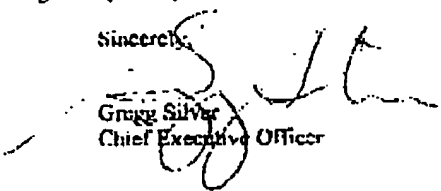
Over the years, Argentum Medical has developed various conductive antimicrobial wound  
dressing and medical device covers and is one of the leaders in the industry due to its research and  
development in this field. In addition, Argentum Medical has obtained rights in numerous patents  
throughout the world with regard to this technology.

Argentum Medical recently discovered that you, your manufacturer, or your distributor are or  
plan to make, use, offer to sell, sell, or import product or products related to conductive wound dressings  
or conductive medical device covers. The product or products in question include various sizes of silver  
nylon contact wound dressings, contact wound dressings, and antimicrobial wound dressings. The  
product or products appear to share many if not all of the features of the subject matter claimed in U.S.  
Patent No. 6,861,570. Accordingly, Argentum Medical invites you or your representative to contact the  
undersigned to explore possible licensing opportunities with regard to U.S. Patent No. 6,861,570 and  
related patents and patent applications.

Alternatively, Argentum Medical invites you to provide written comments on which features of  
the subject matter claimed in U.S. Patent No. 6,861,570 are not found in your product or products.

We look forward to hearing from you at your earliest convenience.

Sincerely,

  
Gregg Silver  
Chief Executive Officer

Enclosure

## Claims as allowed

1. A wound dressing for treating a pathology in a portion of a living organism, comprising, at least one layer of conformable, conductive fabric having a surface resistance of less than about 1000 Ohms/cm<sup>2</sup>,

wherein the at least one layer of conformable, conductive fabric comprises a biologically inert polymer uniformly coated with a metal or a metal alloy; and

wherein the wound dressing is configured to passively lower the pathology's electrical potential by an amount effective to promote healing.

2. Canceled.

3. The wound dressing of Claim 1, wherein the polymer is nylon, polyethylene, polypropylene, wool, silk, cotton, or elastomers.

4. The wound dressing of claim 1, wherein the metal is selected from the group consisting of silver, gold aluminum, nickel, tin, stainless steel, copper, and combinations thereof, and the metal alloy is selected from the group consisting of aluminum-copper, aluminum-magnesium, copper-gold, copper-nickel, copper-palladium, gold-palladium, gold-silver, iron-nickel and silver-palladium, and combinations thereof.

5. Canceled.

6. The wound dressing of Claim 1, wherein the wound dressing is an orthotic appliance.

7. The wound dressing of Claim 1, wherein the wound dressing is a dental appliance.

8. The wound dressing of Claim 1, wherein the wound dressing is shaped for a use around external fixture pin structures.

9. The wound dressing of Claim 1, wherein the wound dressing is shaped for a use around ostomy sites.

10. The wound dressing of Claim 1, wherein the wound dressing is shaped for use around tracheostomy sites.

11. The wound dressing of Claim 1, wherein the wound dressing is shaped for a use around catheter sites.

12. The wound dressing of Claim 1, wherein the wound dressing is shaped for packing body cavities.

13. The wound dressing of Claim 1, wherein the device has a tubular shape.

14. The wound dressing of Claim 13, wherein the tubular shape is incorporated into a wound drain.

15. A medical device, comprising,

a) a wound dressing comprising more than two layers of a fibrous material; wherein the material contains nonmetalized fibers and fibers that are at least partially coated with a metallic material to yield metalized fibers, each layer being joined to an adjacent layer and having a ratio of metalized fibers to nonmetalized fibers; and

b) an appliance, wherein the wound dressing is incorporated into the appliance such that the layers of the wound dressing form a gradient of metalized fiber to nonmetalized fiber ratios, the highest ratio layer capable of being placed in contact with a wound site.

16. The medical device of Claim 15, wherein the appliance is shaped for a use selected from the group consisting of orthopedic, dental, catheter, packing a body cavity, an ostomy site, a tracheostomy site, and around external fixture pin structures.

17. The medical device of Claim 15 wherein the appliance has a tubular shape.

18. The medical device of Claim 17 wherein the appliance is a wound drain.

19. A method for treating a portion of the body of a living organism, comprising,

a) applying a wound dressing to a pathology of a portion of the body of a living organism, wherein the wound dressing comprises at least one layer of conformable, conductive fabric;

wherein the conformable, conductive fabric comprises a surface resistance less than about 1000 ohms/cm<sup>2</sup>;

wherein the conformable, conductive fabric is at least partially composed of a biologically inert polymer uniformly coated with a metal or metal alloy; and

wherein no external energy source or galvanic cell action is required to alter an electrodynamic process of a portion of the body of a living organism;

b) altering the electric parameters of the portion of the body without using an external energy source or galvanic cell action; and

c) lowering the electrical potential of the conductively bridging healthy body surfaces surrounding the pathology with the medical device.

20. Canceled.

21. Canceled.

22. Canceled.

23. A medical device comprising:



conformable, conductive fabric comprising a biologically inert polymer uniformly coated with an antimicrobial metal, wherein said conformable, conductive fabric has a surface resistivity of less than about 1 Ohm/in<sup>2</sup> and interiorly shifts a pathology's maximum electrical resistance by an amount sufficient to induce an analgesic effect when in contact with a pathology.

24. Canceled

25. Canceled

26. The medical device of claim 23, wherein said shift stimulates healing.

27. The medical device of claim 23, further comprising a moisture retaining layer.

28. The medical device of claim 23, wherein said polymer is coated using a solution electroless plating process.

29. The medical device of claim 28, wherein said metal comprises silver.

30. The medical device of claim 23, wherein the conductive layer comprises a surface resistance of less than about 1000 ohms/cm<sup>2</sup>.

31. A medical device comprising:  
at least one layer of conformable, conductive fabric material having a surface resistance less than about 1 ohms/cm<sup>2</sup>, wherein said at least one layer of conformable, conductive fabric material comprises a biologically inert polymer and a conductor; and wherein said medical device induces an analgesic effect by interiorly shifting a pathology's maximum electrical resistance when applied to the pathology.

32. A medical device comprising:  
at least one layer of conductive material comprising at least two plies of a conductor, wherein the at least one layer of conductive material has a surface resistance less than about 1 ohms/cm<sup>2</sup>, and wherein at least one of said at least two plies of a conductor comprises a biologically inert polymer, and wherein the device interiorly shifts a pathology's maximum electrical resistance when in conductive contact with the pathology by an amount effective to promote healing and induce an analgesic effect.

33. Canceled.

34. The wound dressing of claim 23, wherein the fibers are electrolessly plated with a metal or metal alloy.

35. The wound dressing of claim 34, wherein the metal or metal alloy comprises silver.

36. The wound dressing of claim 1, wherein the surface resistance of the conformable, conductive fabric is less than about 1 Ohm/in<sup>2</sup>.